

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 15, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 106 - 1-11-01**
HB 174 - 1-11-01
HB 187 - 1-11-01

HB 189 - 1-11-01

HB 223 - 1-11-01

Executive Action: HB 214 - DO PASS

HB 184 - DO PASS

HB 187 - TABLE

HB 106 - TABLE

HB 68 - TABLE

HEARING ON HB 187

Sponsor: Rep. Jeff Mangan said he introduced this Bill last session and based on the testimony, he was not happy with it but he wanted to introduce it again. At this point, he is still struggling with this Bill and at executive action or any time he will move to Table the Bill until he can feel comfortable enough to work with amendments.

EXECUTIVE ACTION ON HB 187

Motion/Vote: REP. MANGAN moved that HB 187 BE TABLED. #1 Motion carried unanimously 19-0.

HEARING ON HB 106

Sponsor: Rep. Jeff Mangan, HD 45, Great Falls said this Bill is an Act increasing the penalty for a person distributing or manufacturing a dangerous drug at a place where day care for children is provided.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 4.4}

Proponents: Rep. Gary Matthews, HD 4, Miles City said his community has been involved in two high-profiled drug cases in the last three months. The first one was a high school senior who lost her life because of a drug overdose and the second was a day-care facility. The owner of the facility was arrested for selling drugs out of her place of business. The people in his community were outraged.

Opponents: Scott Crichton, Executive Director, American Civil Liberties Union of Montana. He wanted it noted he is not sympathetic to people who are dealing drugs out of day care centers in Miles City. He said existing law makes it quite possible to prosecute and apprehend these people. They face substantial sentences depending on their criminal record and histories. He feels there is a law that works, is enforceable ,

a law that sends people up for a long time for drugs. He feels it is not a necessary piece of legislation.

Informational Witnesses: Becky Fleming-Siebenaler, Supervisor, Child-Care Licensing Program, Department of Public Health and Human Services.

Questions from Committee Members and Responses: Reps. Adams, Hurdle, Holden, Clancy, Shockley to Rep. Mangan, John MacMaster, Ms. Fleming-Siebenaler for clarification. Ms. Fleming-Siebenaler said she was familiar with the Miles City day care center and pulled their license.

Closing by Sponsor: Rep. Mangan closed the Hearing on HB 106.

EXECUTIVE ACTION ON HB 106

Motion: REP. MANGAN moved that HB 106 DO PASS. #2

Discussion: Reps. Hurdle, Peterson, Noennig, Holden, Newman to Rep. Mangan for explanation and comments.

{Tape : 1; Side : A; Approx. Time Counter : 4.4 - 28.3}

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 18.4}

Vote: Motion failed 8-12 with Reps. Shockley, Laszloffy, Adams, Clancy, Curtiss, Gutsche, Harris, Hurdle, Noennig, Peterson, Rice and Younkin voting no.

Motion/Vote: REP. LASZLOFFY moved that HB 106 BE TABLED. Motion carried unanimously. 20-0 #3

EXECUTIVE ACTION ON HB 214

Motion: REP. YOUNKIN moved that HB 214 DO PASS. #4

Discussion: Reps. Shockley, Eggers, Noennig, Peterson, Newman

Vote: Motion carried unanimously 20-0

EXECUTIVE ACTION ON HB 68

Motion: REP. THOMAS moved that HB 68 DO PASS. #5

Discussion: John MacMaster said the Attorney General's office, with the O.K. of Rep. Price, suggested clarifying amendments and then he explained the amendments.

Reps. Hurdle, Adams, Shockley, Eggers.

Motion/Vote: REP. THOMAS moved that HB 68 BE AMENDED. #6 Motion carried unanimously. 20-0

{Tape : 1; Side : B; Approx. Time Counter : 18.4 - 29.6}

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 2.1}

Discussion: Reps. Mangan, Shockley, Gallus, Clark, Eggers, Noennig, Laszloffy, Newman concerning the Bill.

Motion/Vote: REP. MANGAN moved that HB 68 DO PASS AS AMENDED. #7 Motion failed 7-13 with Reps. Shockley, Laszloffy, Adams, Clancy, Curtiss, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan, Peterson and Rice voting no.

Motion/Vote: REP. THOMAS moved that HB 68 BE TABLED. #8 Motion carried unanimously. 20-0

{Tape : 2; Side : A; Approx. Time Counter : 2.1 - 18.9}

HEARING ON HB 174

Sponsor: Rep. Larry Jent, HD 29, Bozeman said the purpose of this Bill is to make the sentencing presumption that the judge has for misdemeanor possession the same as for misdemeanor paraphernalia. The bill was suggested by Judge Scott and the city prosecutor in the West Yellowstone city court.

Proponents: Beth Brenneman, Helena, Legal Director, American Civil Liberties Union of Montana

Opponents: None

Questions from Committee Members and Responses: Reps. Clark, Eggers, Curtiss, Laszloffy, Hurdle, Shockley, Thomas to Rep. Jent and Rep. Newman for clarification.

{Tape : 2; Side : A; Approx. Time Counter : 18.9 - 29.1}

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 3.5}

Closing by Sponsor: Rep. Jent closed the Hearing on HB 174.

HEARING ON HB 223

Sponsor: Rep. Trudi Schmidt, HD 42, Great Falls said the Bill is drafted for an Act revising the laws relating to service of process in child abuse and neglect proceedings; clarifying provisions relating to service of process by publication in child abuse and neglect proceedings. This Bill came as a result of her sitting on the State Family Service Advisory Council.

Proponents: Thomas A. Olson, retired District Judge, Bozeman said his most serious concern is that the statutes on service of parents in abuse and neglect cases are a disaster in the Montana Code. They are inconsistent and inadequate, and sometimes nonexistent, in his opinion. Basically, it addresses a major concern, that is, some of the statutes say notices should be published to the missing father, or non-custodial parent and Montana Civil procedure rules should be used, which is like a legal boxed canyon, so this Bill is designed to permit publication upon non-custodial parents.

Sen. Mike Halligan, Missoula spoke on technical aspects of the Bill.

Ann Gilkey, Court Assessment Program

Opponents: None

Informational Witnesses: Mary Phipper, Montana Association of Clerks of District Courts.

Chuck Hunter, Administrator, Child and Family Services Division

Questions from Committee Members and Responses: Reps. Mangan, Gutsche, Peterson, Laszloffy, Noennig, Shockley, Newman, Holden, Wolery, Eggers, Clark to Ms. Gilkey, Judge Olson and Mr. Hunter concerning procedural measures. Judge Olson said this is a long process. The first step is the allegation of abuse, the filing of some sort of a petition charging abuse, then the adjudication, or the trial, on that petition as to whether the abuse happened. All of this is outside the presence of the missing parent so they are dealing with the parent that is on hand and who is alleged to have abused or neglected the child. Following the trial on the abuse, comes the disposition hearing and that is: what do we need to do with this parent here before us to make them a better parent; what kind of treatment plan, what kind of rehabilitation. During the whole process they are still gathering information on where that missing parent is. They do not want to hold the process up for publication notices.

{Tape : 2; Side : B; Approx. Time Counter : 3.5 - 29.3}

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 11.8}

{Tape : 3; Side : A; Approx. Time Counter : 11.8 - 29}

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 6.3}

Closing by Sponsor: Rep. Schmidt closed the Hearing on HB 223

EXECUTIVE ACTION ON HB 191

Motion: REP. GALLUS moved that HB 191 DO PASS. #9

Motion: REP. MANGAN moved that HB 191 BE AMENDED. #10

Discussion: Reps. Gallus, Younkin, Peterson, Noennig.

Vote: Mangan amendments failed 3-15.

Motion: Rep. Wolery moved an amendment which Mr. MacMaster said is already on the books. #11

Discussion: Reps. Noennig, Gallus, Hurdle, Mr. MacMaster, Newman, Harris, Peterson.

{Tape : 3; Side : B; Approx. Time Counter : 6.3 - 19.4}

Motion: Rep. Noennig moved to postpone HB 191.

EXECUTIVE ACTION ON HB 184

Motion: REP. GALLUS moved that HB 184 DO PASS. #13

Discussion: Reps. Younkin, Gallus, Clancy, Laszloffy, Newman.

Motion/Vote: REP. GALLUS moved that HB 184 BE AMENDED. #14.

Motion failed 7-12 with Reps. Shockley, Laszloffy, Clark, Clancy, Curtiss, Eggers, Harris, Holden, Noennig, Rice, Thomas and Wolery voting no.

Motion/Vote: REP. GALLUS moved that HB 184 DO PASS. #15. Motion carried 15-4 with Reps. Laszloffy, Clancy, Curtiss and Rice voted no.

{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 9.7}

In response to a question from Rep. Mangan, Mr. MacMaster said the rule says a Bill requiring a fiscal note, you have to

interpret the word "requiring". If this Committee votes to put a fiscal note on a Bill, this Committee has determined it's required. At that point, you can't report it out of Committee because that determination has to be made. If you do not vote to have a fiscal note attached on a Bill then you can report it out. If **Rep. Gallus** wants a fiscal note, he can ask for one. **Rep. Gallus** said if he can, he will request a fiscal note.

{Tape : 4; Side : A; Approx. Time Counter : 9.7 - 10.2}

ADJOURNMENT

Adjournment: 11:00 A.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh11aad)